IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 1722/07
(Kulwant Singh & Anr. Vs. State of Rajasthan & Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 931/2007
(Sukhvir Kaur Vs. State of Rajasthan and Ors.)

Date of Order : 04/12/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioners Kulwant Singh and Anr.
Mr. Trilok Joshi for petitioner Sukhvir Kaur
Mr. Ashok Upadhyay, P.P. for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyay, public prosecutor accepts the notice for State in both the petitions and Mr. M.K.Garg appearing for the petitioners Kulwant Singh and Anr. accepts the notice for respondents No.2 to 12 in S.B.Cr. Misc. Petition No. 931/07 and Mr. Trilok Joshi appearing for petitioner Sukhveer Kaur accepts notice for the respondent No.2 Sukhveer Kaur in S.B.Criminal Misc. Petition No.1722/07.

With the consent of learned counsel for the parties, both the petitions are heard and decided together at the

admission stage.

Petitioners Kulwant Singh and Malkiat Singh have challenged the order dated 16.4.2007 passed by Additional Sessions Judge, Sri Karanpur (for short 'the revisional court' hereinafter) in Criminal Revision No.31/06 whereby while partly allowing the revision filed by the respondent No.2 Sukhveer Kaur, the revisional court modified the order passed by the Judicial Magistrate, First Class, Padampur (for short 'the trial court' hereinafter) and took cognizance of the offences under Sections 406 and 498 A IPC against Kulwant Singh and Malkeit Singh.

By S.B.Criminal Misc. Petition No.931/07, petitioner Sukhveer Kaur has challenged the very order dated 16.4.2007 passed by the revisional court in the revision filed by her against the order passed by the trial court declining to take cognizance against the respondents No.2 to 12.

It appears that both the parties were aggrieved by the order passed by the trial court taking cognizance as also declining to take cognizance against some of the accused persons.

It is contended by learned counsel appearing for the petitioners Kulwant Singh and Anr. that the revisional court exceeded its jurisdiction in taking cognizance against the petitioners. The powers to order inquiry have been provided

under Section 398 Cr.P.C. Section 398 Cr.P.C. reads as under :-

"398. Power to order inquiry.- On examining any record under Sec.397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Sec. 203 or sub-section (4) of Sec. 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this Section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

The powers of revision of Sessions Judge have been provided under Section 399 Cr.P.C. which reads as under :-

"399. Sessions Judge's Powers of revision.- (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Sec. 401.

(2) Where any proceedings by way of revision is commenced before a Sessions Judge under Sub-section (1), the provisions of sub-section (2), (3), (4) and (5) of Sec. 401 shall,

so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as reference to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

Thus, from the perusal of the provisions noticed above, more particularly the provisions of Section 398 Cr.P.C., it is clear that the Sessions Judge on examining any record under Section 397 or otherwise, may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Sec. 203 or sub-section (4) of Sec. 204, or into the case of any person accused of an offence who has been discharged.

In view of these provisions, in my view, the order passed by the revisional court cannot sustain and therefore is liable to be set aside and the matter deserves to be remanded to the revisional court to pass a fresh order in the light of the provisions referred herein above.

Consequently, both the misc. petitions are allowed. The order impugned dated 16.4.2007 is set aside and the matter is remanded to the revisional court to examine the record of the trial court and pass a fresh order in accordance with law.

(H.R.PANWAR),J.

rp

S.B.CR. MISC. STAY PETITION NO. 1313/07
In
S.B.CRIMINAL MISC. PETITION NO. 1722/07
(Kulwant Singh & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 04/12/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioners
Mr. Trilok Joshi for respondent.
Mr. Ashok Upadhyay, P.P. for the State.

BY THE COURT:-

Since the criminal misc. petition itself has been allowed, the stay petition stands disposed of.

(H.R.PANWAR),J.

rp.